

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JOSE CARREON and IMELDA AVILEZ §
§
V. § CIVIL ACTION NO. G-11-027
§
ALLSTATE TEXAS LLOYDS, ET AL. §

ORDER OF ABATEMENT

On January 24, 2011, Defendant, Allstate Texas Lloyds, filed a Verified Plea in Abatement alleging that Plaintiffs, Jose Carreon and Imelda Avilez, failed to provide the 60-day Notice required by Texas Insurance Code Section 541.154 before filing this suit on January 17, 2010, to recover insurance benefits for property damage caused during Hurricane Ike. The Plea will be granted.

Plaintiffs did not provide a Notice letter to Allstate until February 3, 2011, when they filed their verified response to Allstate's Plea. While the letter is sufficient to satisfy the statutory requirements of Section 541.154, see Richardson v. Foster & Sear, LLP, 257 S.W.3d 782, 786 (Tex. App. -- Fort Worth, 2008), it was clearly not timely and Allstate is, therefore, entitled to the 60-day abatement mandated by Section 541.155.

Accordingly, it is the **ORDER** of this Court that Allstate's Verified Plea in Abatement (Instrument no. 10) is **GRANTED** and this action is formally **ABATED** for **60 days**, effective as of February 3, 2011; the abatement **SHALL** automatically expire on April 5, 2011.

DONE at Galveston, Texas, this 15th day of February, 2011.



John R. Froeschner
United States Magistrate Judge